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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,877	09/16/2003	Richard J. Whitbourne	32286-191984	1150
26694	7590	03/14/2007		
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998			EXAMINER HO, UYEN T	
			ART UNIT 3731	PAPER NUMBER
			MAIL DATE 03/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

87

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/662,877</p>	<p>Applicant(s) WHITBOURNE ET AL.</p>	
	<p>Examiner (Jackie) Tan-Uyen T. Ho</p>	<p>Art Unit 3731</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 2/20/07 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


(Jackie) Tan-Uyen T. Ho
Primary Examiner
Art Unit: 3731
3/7/07

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 2/20/2007 have been fully considered but they are not persuasive. Applicant argues that "the drug reservoir/ release layer of the present invention is an outermost layer, so it excludes the drug reservoir layer from having a diffusion barrier covering it". Examiner disagrees. The claims simply claim "an outermost layer drug reservoir layer of two or more polymers..." The claims do not expressly claim the outermost layer being a drug reservoir. With a broadest reasonable interpretation, "an outermost layer drug reservoir of two or more polymers" encompasses the only one outer drug reservoir layer of Pacetti et al., which has a drug stabilizing polymer/diffusion barrier (30) coating on a reservoir polymer (34).

Regarding the primer layer polymers being distinct from the drug reservoir layer polymers: First, the polymers of drug reservoir layer contain active ingredient and the primer layer does not. Second the polymers of drug reservoir layer comprising particles and the primer layer does not. Third, Pacetti et al. disclose the composition of an primer layer in col. 4, line 39 to col. 8, line 44 some are different from the composition of forming the active ingredient coating layer disclosed in col. 8, line 45 to col. 15, line 46).

Again, the claim limitations do not exclude the drug reservoir layer from having a diffusion layer or coating.

Regarding to two or more polymers, applicant argues that the present application, paragraph 16 discloses the inventive coatings use a binder system with two or more polymers. However, the claims simply claim two or more polymer without going into the detail of the binder system. Thus with a broadest reasonable interpretation, a primer or a reservoir layer with two or more polymers as claimed encompass the primer and reservoir layer with two or more polymers as disclosed by Pacetti et al..